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Attorneys for the M/V CHLOE Z

**FILED**  
DISTRICT COURT OF GUAM

OCT 20 2006 *nba*

**MARY L.M. MORAN**  
CLERK OF COURT

**IN THE DISTRICT COURT OF GUAM**  
**TERRITORY OF GUAM**

TCW SPECIAL CREDITS, et al.,  
Plaintiffs,

v.

FISHING VESSEL M/V CHLOE Z, et al.,  
Defendants.

Case No. 96-00055

**STATUS REPORT**

In response to the Court's Order of October 11th the CHLOE Z provides the following:

1. As the Court is aware, this litigation is a mortgage foreclosure *In Rem* claim brought by TCW. The vessel was long ago sold and some of the funds from that sale remain in the registry of the Court.

2. Although not listed on the Court's docket, the undersigned counsel was admitted *pro hac vice* to defend the vessel CHLOE Z (see docket number 914) and did appear as counsel for the trials of plaintiffs-in-intervention Robert Matos, Slobodan Pranjic, and Vjeko Mazic. The undersigned counsel asks that the Clerk of the Court reinstate his name as counsel of record so that he receives all pleadings and orders filed.

3. It is the understanding of the undersigned counsel that the only two claims remaining against the proceeds held in the registry of the Court (other than the claim by TCW) are those brought by personal injury plaintiffs-in-intervention Slobodan Pranjic and Robert Matos. The claim of Vjeko Mazic has been settled.

4. On June 5, 2006, the Ninth Circuit Court of Appeals remanded the claims of Robert Matos and Slobodan Pranjic for further proceedings. A Petition for Rehearing *En Banc* was denied by the Ninth Circuit by order of August 3, 2006. A Petition for *Writ Certiorari* in the United States Supreme Court is due by November 1, 2006. It is the intention of the vessel CHLOE Z to file such a Petition and on this date the vessel is filing an application for extension of time within which to file that Petition. In its application for extension of time the CHLOE Z asks that the Supreme Court extend the time for filing the Petition to December 1, 2006.

5. CHLOE Z intends to file a motion to stay these proceedings pending the resolution by the Supreme Court of its Petition for *Writ of Certiorari*. If the Petition is granted, and CHLOE Z's position accepted, it will result in what can essentially be categorized as a "defense verdict." In the last evidentiary hearing held before Judge Unpingo in Guam, the Court ruled that the claims in this *in rem* proceeding were barred by the statute of limitations. The Ninth Circuit reversed on that issue and it is that issue on which a Petition for *Writ Certiorari* is being filed.

6. If the Petition for *Writ Certiorari* is denied it appears that there is only one remaining "bundle" of issues for this Court to decide. Counsel on behalf of Mr. Matos and Mr. Pranjic have filed a motion and memorandum asking that the Court fix the amount of prejudgment and postjudgment interest. It is the undersigned counsel's belief that, if the Petition for *Writ Certiorari* is denied, these are the only issues left in calculating the quantum of the

judgments in favors of Messrs. Matos and Mazic. The undersigned has conferred with Mr. Ritter and, subject to this Court's approval, it has been agreed that CHLOE Z's opposition to the motion regarding interest shall be due on November 1, 2006.

In their memorandum and motion plaintiffs have provided a calculation of an economist as to the amount of pre- and postjudgment interest they believe is due. As will be seen from the opposition memorandum to be filed by CHLOE Z there are a number of legal and factual issues that must be determined before a calculation can be performed. For example, one of the legal issues will be whether prejudgment interest can be awarded on postjudgment damages (for example an earnings loss number into the future). See *Columbia Brick Works v. Royal*, 765 F.2d 1066, 1068 (9<sup>th</sup> Cir. 1985). A factual determination that may have to be made, depending upon the Court's ruling on this legal issue, is what component of Mr. Pranjic and Mr. Matos' judgment were for postjudgment damages. The undersigned counsel has proposed to Mr. Ritter that the parties have the Court decide the numerous legal and factual issues attendant to the calculations of pre- and postjudgment interest and that the parties then submit a very brief economist's report which incorporates the Court's rulings into the calculations. Mr. Ritter has declined to agree to that proposal. It is CHLOE Z's belief that because of the numerous issues involved it will be virtually impossible to predict with any accuracy, and provide to the Court, a calculation which predates the Court's rulings on these issues. There are simply too many variables.

CHLOE Z requests that this Court issue an order adopting the procedure proposed herein by the CHLOE Z of a "stepped" process whereby the Court rules on the legal and factual issues presented by the motion, and the parties are then given a relatively short period of time to provide an economist's report which incorporates the Court's rulings. It is presumed that both

economists will have precisely the same number if this process is followed as there is nothing other than "number crunching" at that point for the economist to accomplish.

The CHLOE Z will not seek to stay these proceedings pending action by the Supreme Court before the Court's rulings on the interest issues but will file such a motion in response to any request by Messrs. Matos and Pranjic to distribute funds from the court's registry.

RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of October, 2006.

**ARRIOLA, COWAN & ARRIOLA**  
Attorneys for F/V CHLOE Z

By:   
ANITA P. ARRIOLA

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of October, 2006, a true and correct copy of the foregoing was sent via U.S. Mail to:

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